The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte WERNER ZAGLER

Appeal No. 2004-1328
Application 09/803,360

MAILED

JAN 20 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF[1]

Before THOMAS, BARRY, and SAADAT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 1-9. Representative claim 1 is reproduced below:

[1] The requested oral hearing set for January 11, 2005, was waived by a telephone call from appellant's representative to a Board Administrator during the time set for the hearing.

1. A method of facilitating entry into or out of a motor vehicle, the method comprising the acts of:

providing a double unlock door command;

simultaneously or subsequently opening a vehicle door; and

completely lowering a window of the vehicle door upon the occurrence of both the double unlock command and the opening of the vehicle door.

The following reference relied on by the examiner is:

Böhm et al. (Böhm) DE 42 03 512 C1[2] May 19, 1993

Claims 1-9 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner relies upon the German patent alone.

Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and reply brief for the appellant's positions, and to the answer for the examiner's positions.

OPINION

For the reasons generally set forth by the examiner in the answer, with the exception noted below, we sustain the rejection of all claims on appeal under 35 U.S.C. § 103.

[2] Our understanding of this reference is based upon a translation provided by the Scientific and Technical Information Center of the Patent and Trademark Office. A copy of the translation is enclosed with this decision.

From our study of the principal brief on appeal, it appears to us that appellant presents substantially the same arguments with respect to each independent claim 1, 5 and 9 on appeal and separately argues dependent claims 4 and 7, which together have substantially the same limitation. For our purposes, we have chosen as a representative independent claim, claim 1 on appeal.

Since all independent claims on appeal have substantially the same limitations, as to independent claim 1, we point out that the second recited clause recites "simultaneously or subsequently opening a vehicle door." The simultaneous or subsequent opening of the door is not per se recited in the concluding clause, the clause argued principally in the brief and reply brief. This last clause of representative claim 1 on appeal recites "completely lowering a window of the vehicle door upon the occurrence of both the double unlock command and the opening of the vehicle door." When properly construed with respect to the second noted clause, this last clause must be understood to recite "completely lowering a window of the vehicle door upon the occurrence of both the double unlock command and the simultaneous or subsequent opening of the vehicle door." This latter interpretation is consistent with the express recitations in independent claims 5 and 9 on appeal.

The examiner's statement of the rejection at pages 3 and 4 of the answer pertaining to the subject matter of independent claim 5 on appeal recognizes that the German patent does not teach specifically a double unlock command. The examiner

correctly explains that the reference essentially teaches a single unlock command. From our study of this reference, the context of the overall disclosure is a setting where an actual key is used to unlock the doors but recognizes that the prior art also may use a remote triggering transmitter at a distance from the vehicle for unlocking and control purposes as discussed at the top of translation page 5. In any event, this double unlock command is not argued in the brief or reply brief and is admitted to be known in the art at specification pages 1 and 2 and the Summary of the Invention in the brief at page 2. It is interesting to note here that the teaching of this admitted prior art is such that a complete lowering of a door window takes place by a single operation of a double unlock command alone.

The principal argument in the brief and reply brief of appellant is that the reference does not lower the vehicle window until a separate and additional action by the operator occurs after the door is opened. It is further explained at page 4 of the principal brief on appeal that this separate and additional action requires the user to actuate the door handle for a specified period of time. This is consistent with the teachings of the operation of Figure 2 at translation page 10 and as depicted by the English translation version of the Figure 2 of this reference that was attached to the brief. Nevertheless, there is no negative limitation in the claims that distinguishes over the operation and functionality of the reference to the extent of not requiring the door handle to be actuated for less than one second or any amount of time for that matter.

There is no specified time limit in each of the independent claims 1, 5 and 9 on appeal. The reference as relied on and explained by the examiner merely teaches more than what is required of the independent claims on appeal. Finally, the claims are open-ended by the use of the term "comprising."

With respect to the arguments at page 6 of the principal brief on appeal, we note that simultaneity is only an alternative requirement of representative claim 1 on appeal as explained earlier in this opinion. Certainly a one-second operation time requirement of operating the door handle of the reference for at least one second in time is subsequent to or substantially simultaneous within the context of the recited subject matter of the independent claims 1, 5 and 9 on appeal.

We are in substantial agreement with appellant's assertions of pages 7 and 8 of the principal brief on appeal and pages 2 and 3 of the reply brief that the examiner has essentially merely alleged in a conclusory fashion that the subject matter of claims 4 and 7 are inherent within the operation of the German patent. From our study of the translation of this reference, it does not otherwise teach any monitoring of a closing operation of a window by means of an anti-squeeze device. Therefore, this feature is not necessarily inherent within the operation of the German patent.

On the other hand, it appears in the record before us that between the publication date of May 19, 1993 of the German patent relied upon by the examiner and the effective filing date of the present German application in Germany, it became known

in the art to utilize such monitoring devices as anti-squeeze devices during the closing operations of windows. The specification paragraph 9 at page 3 and specification paragraph 18 at page 5, both state that "an anti-squeeze device, which is known per se" was only generally mentioned by appellant in the disclosure of his own application. As noted by the examiner at the bottom of page 7 of the answer, there is no other explanation of the nature or use of this anti-squeeze device in appellant's specification as filed. In any event, based upon the timeframe difference between a publication date of the reference and the filing of the present application, we consider that it would have been obvious to the artisan to have employed such an apparently safety-type device for the user during the closing operations of the window of the vehicles that are clearly disclosed within the reference relied by the examiner. Obviously, since the anti-squeeze device was known in the art as admitted by appellant, the use of such device would have enhanced the safety operation of that system already disclosed in the German patent relied upon by the examiner.

Since no other claimed feature or claims other than those discussed in this decision have been argued in the brief and reply brief, we affirm the rejection of claims 1-9 under 35 U.S.C. §103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective Sept. 13, 2003; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat., Office 21 (Sept. 7, 2004)).

AFFIRMED

James D. Thomas )
Administrative Patent Judge )
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) BOARD OF PATENT
Lance Leonard Barry ) APPEALS AND
Administrative Patent Judge ) INTERFERENCES
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)
Mahshid Saadat )
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